

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA)	
)	
v.)	CRIMINAL NO.
)	
DONALD W. KEYSER,)	
)	
Defendant.)	

PLEA AGREEMENT

Paul J. McNulty, United States Attorney for the Eastern District of Virginia, Patricia M. Haynes and David H. Laufman, Assistant United States Attorneys, the defendant, Donald W. Keyser, and the defendant's counsel, Robert S. Litt and Mara V.J. Senn, have entered into an agreement pursuant to Rule 11 of the Federal Rules of Criminal Procedure. The terms of the agreement are as follows:

1. Offense and Maximum Penalties

The defendant agrees to waive indictment and plead guilty to a three count criminal information charging the defendant with one count of removing United States documents, in violation of Title 18, United States Code, Section 2071(b), and two counts of making false statements, in violation of Title 18, United States Code, Section 1001(a). The maximum penalties for a violation of 18 U.S.C. § 2071(b) are a maximum term of three years of imprisonment, a fine of \$250,000, full restitution, a \$100 special assessment, and one year of supervised release. The maximum penalties for a violation of 18 U.S.C. § 1001(a) are a maximum term of five years of imprisonment, a fine of \$250,000, full restitution, a \$100 special assessment, and three years of supervised release. The defendant understands that this supervised release term is in addition to any

prison term the defendant may receive, and that a violation of a term of supervised release could result in the defendant being returned to prison for the full term of supervised release.

2. Factual Basis for the Plea

The defendant will plead guilty because the defendant is in fact guilty of the charged offenses. The defendant admits the facts set forth in the statement of facts filed with this plea agreement and agrees that those facts establish guilt of the offenses charged beyond a reasonable doubt. The statement of facts, which is hereby incorporated into this plea agreement, constitutes a stipulation of facts for purposes of Section 1B1.2(a) of the Sentencing Guidelines.

3. Sentencing Matters as to Count One

The defendant and the government agree that the appropriate application of the United States Sentencing Guidelines with respect to Count One is as follows:

- a. The applicable Sentencing Guideline is § 2B1.1 and the base offense level is six.
- b. The “loss” under § 2B1.1 (b)(1) of the Sentencing Guidelines is more than \$120,000 but less than \$200,000, resulting in a ten level increase in the offense level. The parties agree that the stipulated “loss” is for purposes of calculating the Sentencing Guidelines, and restitution is not applicable.
- c. A two level upward adjustment is appropriate for Abuse of a Position of Trust, pursuant to § 3B1.3 of the Sentencing Guidelines.
- d. A two level reduction is appropriate for Acceptance of Responsibility, pursuant to § 3E1.1(a). The defendant understands, however, that the government’s concession in this paragraph is not binding on either the United States Probation Officer assigned to prepare the pre-sentence report or the Court. If the defendant qualifies for a decrease under § 3E1.1(a), the government

agrees that the defendant is entitled to an additional one level decrease under § 3E1.1(b).

e. The parties expect that the final adjusted guideline for Count One will be a level 15. The defendant understands, however, that this estimated guideline calculation is simply an estimate, and that it is not binding on either the United States Probation Officer assigned to prepare the pre-sentence report or the Court.

4. Assistance and Advice of Counsel

The defendant is satisfied that the defendant's attorney has rendered effective assistance. The defendant understands that by entering into this agreement, defendant surrenders certain rights as provided in this agreement. The defendant understands that the rights of criminal defendants include the following:

- a. the right to plead not guilty and to persist in that plea;
- b. the right to a jury trial;
- c. the right to be represented by counsel – and if necessary have the court appoint counsel – at trial and at every other stage of the proceedings; and
- d. the right at trial to confront and cross-examine adverse witnesses, to be protected from compelled self-incrimination, to testify and present evidence, and to compel the attendance of witnesses.

5. Terms of Cooperation

The defendant agrees to cooperate fully, truthfully, and completely with the United States, and provide all information known to the defendant regarding any criminal activity and intelligence activity by himself and/or others. A failure to cooperate fully, truthfully, and completely is a breach of this Plea Agreement, as determined by the Court. The defendant acknowledges that he has been

advised that the United States will seek no downward departure from the applicable sentencing guidelines, or from the sentence imposed, pursuant to Section 5K of the Sentencing Guidelines, or Rule 35(b) of the Federal Rules of Criminal Procedure, in respect to the defendant's cooperation.

In regard to that cooperation:

a. As required by the Government, the defendant agrees to be reasonably available for debriefing by law enforcement officers, Department of State investigators, and/or intelligence officers. The timing and location of such debriefings and meetings shall be determined by the Government. Should defense counsel wish to attend particular debriefings, the Government will seek to schedule such debriefings consistent with the schedule of defendant's counsel, who shall make themselves reasonably available.

b. The defendant agrees to provide all documents, records, writings, or materials, objects, or things, of any kind in the defendant's possession or under the defendant's care, custody, or control relating directly or indirectly to all areas of inquiry and investigation except documents privileged under the attorney-client privilege.

c. The defendant agrees that, upon request by the United States, the defendant will voluntarily submit to polygraph examinations to be conducted by a polygraph examiner of the United States' choice. The defendant stipulates to the admissibility of the results of this polygraph examination if later offered in a proceeding to determine the defendant's compliance with this plea agreement.

d. The defendant agrees that the accompanying Statement of Facts is limited to information to support the plea. The defendant will provide more detailed facts relating to this case during ensuing debriefings.

e. The defendant understands and agrees that his cooperation obligation represents a commitment to the United States to cooperate, as described in this agreement, throughout the periods of his imprisonment and supervised release.

The United States agrees not to use any truthful information provided pursuant to this agreement against the defendant in any other criminal prosecution of the defendant. Regardless of any other provision of this agreement, however, the United States may use any statement made by the defendant, whether in the form of the Statement of Facts accompanying this Plea Agreement or in the debriefing of the defendant or in some other form, against the defendant in any prosecution of him resulting from his breach of the Plea Agreement, whether such breach is caused by the defendant giving false information, failing to provide full and complete cooperation, or by any other reason. Such a prosecution includes, but is not limited to, a prosecution for the making of false or perjurious statements.

6. Role of the Court and the Probation Office

The defendant understands that the Court has jurisdiction and authority to impose any sentence within the statutory maximum described above but that the Court will determine the defendant's actual sentence in accordance with 18 U.S.C. § 3553(a). The defendant understands that the Court has not yet determined a sentence and that any estimate of the advisory sentencing range under the U.S. Sentencing Commission's Sentencing Guidelines Manual the defendant may have received from the defendant's counsel, the United States, or the Probation Office, is a prediction, not a promise, and is not binding on the United States, the Probation Office, or the Court. Additionally, pursuant to the Supreme Court's decision in *United States v. Booker*, 125 S. Ct. 738, the Court, after considering the factors set forth in 18 U.S.C. § 3553(a), may impose a sentence above or below the

advisory sentencing range, subject only to review by higher courts for reasonableness. The United States makes no promise or representation concerning what sentence the defendant will receive, and the defendant cannot withdraw a guilty plea based upon the actual sentence.

7. Waiver of Appeal, FOIA and Privacy Act Rights

The defendant also understands that Title 18, United States Code, Section 3742 affords a defendant the right to appeal the sentence imposed. Nonetheless, the defendant knowingly waives the right to appeal the conviction and any sentence within the statutory maximum described above (or the manner in which that sentence was determined) on the grounds set forth in Title 18, United States Code, Section 3742 or on any ground whatsoever, except a violation of this agreement by the United States, in exchange for the concessions made by the United States in this plea agreement. This agreement does not affect the rights or obligations of the United States as set forth in Title 18, United States Code, Section 3742(b). The defendant also hereby waives all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without limitation any records that may be sought under the Freedom of Information Act, Title 5, United States Code, Section 552, or the Privacy Act, Title 5, United States Code, Section 552a.

8. Waiver of DNA Testing

The defendant also understands that Title 18, United States Code, Section 3600 affords a defendant the right to request DNA testing of evidence after conviction. Nonetheless, the defendant knowingly waives that right. The defendant further understands that this waiver applies to DNA testing of any items of evidence in this case that could be subjected to DNA testing, and that the waiver forecloses any opportunity to have evidence submitted for DNA testing in this case

or in any post-conviction proceeding for any purpose, including to support a claim of innocence to the charges admitted in this plea agreement.

9. Special Assessment

Before sentencing in this case, the defendant agrees to pay a mandatory special assessment of one hundred dollars (\$100.00) per count of conviction.

10. Payment of Monetary Penalties

The defendant understands and agrees that, pursuant to Title 18, United States Code, Sections 3613, whatever monetary penalties are imposed by the Court will be due and payable immediately and subject to immediate enforcement by the United States as provided for in Section 3613. Furthermore, the defendant agrees to provide all of his financial information to the United States and the Probation Office and, if requested, to participate in a pre-sentencing debtor's examination. If the Court imposes a schedule of payments, the defendant understands that the schedule of payments is merely a minimum schedule of payments and not the only method, nor a limitation on the methods, available to the United States to enforce the judgment. If the defendant is incarcerated, the defendant agrees to participate in the Bureau of Prisons' Inmate Financial Responsibility Program, regardless of whether the Court specifically directs participation or imposes a schedule of payments.

11. Immunity from Further Prosecution in this District

The United States will not further criminally prosecute the defendant in the Eastern District of Virginia for the specific conduct described in the information or statement of facts, or for any offense arising out of his relationship with Isabelle Cheng, or her superior, or any other offense arising from the materials seized from his residence.

12. Breach of the Plea Agreement and Remedies

This agreement is effective when signed by the defendant, the defendant's attorney, and an attorney for the United States. The defendant agrees to entry of this plea agreement at the date and time scheduled with the Court by the United States (in consultation with the defendant's attorney). If the defendant withdraws from this agreement, or commits or attempts to commit any additional federal, state or local crimes, or intentionally gives materially false, incomplete, or misleading testimony or information, or otherwise violates any provision of this agreement at any time before the expiration of any period of incarceration, probation, or supervised release, then:

- a. The United States will be released from its obligations under this agreement, including any obligation to seek a downward departure or a reduction in sentence. The defendant, however, may not withdraw the guilty plea entered pursuant to this agreement;
- b. The defendant will be subject to prosecution for any federal criminal violation, including, but not limited to, perjury and obstruction of justice, that is not time-barred by the applicable statute of limitations on the date this agreement is signed. Notwithstanding the subsequent expiration of the statute of limitations, in any such prosecution, the defendant agrees to waive any statute-of-limitations defense; and
- c. Any prosecution, including the prosecution that is the subject of this agreement, may be premised upon any information provided, or statements made, by the defendant, and all such information, statements, and leads derived therefrom may be used against the defendant. The defendant waives any right to claim that statements made before or after the date of this

agreement, including the statement of facts accompanying this agreement or adopted by the defendant and any other statements made pursuant to this or any other agreement with the United States, should be excluded or suppressed under Fed. R. Evid. 410, Fed. R. Crim. P. 11(f), the Sentencing Guidelines or any other provision of the Constitution or federal law.

Any alleged breach of this agreement by either party shall be determined by the Court in an appropriate proceeding at which the defendant's disclosures and documentary evidence shall be admissible and at which the moving party shall be required to establish a breach of the plea agreement by a preponderance of the evidence.

13. Nature of the Agreement and Modifications

This written agreement constitutes the complete plea agreement between the United States, the defendant, and the defendant's counsel. The defendant and his attorney acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in writing in this plea agreement, to cause the defendant to plead guilty. Any modification of this plea agreement shall be valid only as set forth in writing in a supplemental or revised plea agreement signed by all parties.

Paul J. McNulty
United States Attorney

By: _____
Patricia M. Haynes
David H. Laufman
Assistant United States Attorneys

APPROVED:

Robert Spencer
Chief, Criminal Division
Eastern District of Virginia

Date of Approval:

Defendant's Signature: I hereby agree that I have consulted with my attorneys and fully understand all rights with respect to the pending criminal information. Further, I fully understand all rights with respect to 18 U.S.C. § 3553 and the provisions of the Sentencing Guidelines Manual that may apply in my case. I have read this plea agreement and carefully reviewed every part of it with my attorney. I understand this agreement and voluntarily agree to it.

Date: _____
_____ Donald W. Keyser

Defense Counsel Signature: We are counsel for the defendant in this case. We have fully explained to the defendant the defendant's rights with respect to the pending criminal information. Further, we have reviewed 18 U.S.C. § 3553 and the Sentencing Guidelines Manual, and have fully explained to the defendant the provisions that may apply in this case. We have carefully reviewed every part of this plea agreement with the defendant. To our knowledge, the defendant's decision to enter into this agreement is an informed and voluntary one.

Date: _____

Mara V.J. Senn, Esq.
ARNOLD & PORTER LLP
555 Twelfth Street, N.W.
Washington, D.C. 20004

Of Counsel:
Robert S. Litt, Esq.
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Counsel for the Defendant

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UNITED STATES OF AMERICA)	
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v.)	CRIMINAL NO. 1:05CR543
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DONALD W. KEYSER)	

WAIVER OF INDICTMENT

I, Donald W. Keyser, the above named defendant, accused of removing United States documents, in violation of Title 18, United States Code, Section 2071(b), and making false official statements, in violation of Title 18, United States Code, Section 1001(a), being advised of the nature of the charge(s), the proposed information, and of my rights, hereby waive in open court prosecution by indictment and consent that the proceeding may be by information rather than by indictment.

Date: _____

Donald W. Keyser

Robert S. Litt
Counsel for Defendant

Before: _____
THE HONORABLE T.S. ELLIS, III
UNITED STATES DISTRICT JUDGE